



**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
980 Ninth Street, Suite 400
Sacramento, CA 95814-2724**

October 30, 2000

IN REPLY REFER TO
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Ms. Nancy Kaufman, Regional Director
U. S. Fish and Wildlife Service, Region 2
P. O. Box 1306
Albuquerque, New Mexico 87103-1306

Dear Ms. Kaufman:

SUBJECT: INTERIM THRESHOLDS FOR NEPA/404 INTEGRATION PROCESS

On August 21, 2000, representatives from the U. S. Environmental Protection Agency (EPA) Region 9, Federal Highway Administration (FHWA), Federal Transit Administration (FTA) Region 9, Nevada Department of Transportation (NDOT), U. S. Fish & Wildlife Service (FWS), National Marine Fisheries Service (NMFS), U. S. Army Corps of Engineers (ACOE), and the California Department of Transportation (Caltrans) participated in a meeting to discuss the future of the 1994 NEPA/404 Integration Process Memorandum of Understanding (MOU). Two of the issues that were discussed were: (1) revision of the document, and (2) identification of an interim threshold for invoking the MOU.

Because of recent regulatory changes to the ACOE's Nationwide and Individual Permits, as well as organizational changes within FHWA, the FHWA California Division office and Caltrans also requested that the group revise the existing MOU to limit its application to federal-aid transportation projects in California. Although some agencies expressed concern about developing a California-only MOU, the consensus was to revise the MOU, especially in light of Nevada DOT's (NDOT) statement that they intend to terminate participation in the MOU. The signatories are still awaiting formal notification by NDOT of their intentions. The revised MOU will apply only to California projects. However, the Arizona Department of Transportation (ADOT) and FHWA Arizona Division are invited to participate in the revision discussions, unless they are satisfied with the conditions set forth in the original MOU, then we request that ADOT formally notify the signatories of their intentions. As for the second issue, the FHWA California Division was tasked to establish an interim threshold for California that would remain in place until such time that revisions to the MOU have been made and approved.

Therefore, in accordance with the group's direction, the FHWA California Division has established the following interim threshold. Effective immediately, and until the MOU has been revised and approved, the NEPA/404 MOU process will be invoked for all proposed federal-aid transportation projects in the State of California that are likely to have:

- Impacts greater than 5 acres to special aquatic sites⁴, or
- Impacts greater than 5 acres to other waters of the U.S.

The project sponsors of those federal-aid transportation projects in California that are currently following the NEPA/404 MOU process, where the proposed project impacts would be less than the interim threshold, may inform all actively participating NEPA/404 agencies that they are withdrawing from the MOU process. If the project sponsor does decide to withdraw from the process, it does not diminish the responsibility of the project sponsor to comply with and implement the Clean Water Act.

Any questions regarding the interim threshold may be directed to Karen Schmidt, FHWA, California Division, at (916) 498-5046 (until November 22, 2000), Dennis Scovill, FHWA, California Division, at (916) 498-5034, or Sheila Mone, Caltrans, at (916) 653-8746.

Sincerely,

/s/ Michael G. Ritchie
Michael G. Ritchie
Division Administrator

⁴ Special aquatic sites are defined in the MOU Guidance Papers and are those sites identified in 40 CFR 230 Subpart E (i.e., sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes).